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No. 688

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

IN THE MATTER OF THE UNAUTHORIZED PRACTICE OF LAW IN RE J. HARVEY CROW.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PRELIMINARY STATEMENT

Respondents respectfully urge that this case is not a proper one for review by the Supreme Court of the United States. There is no question involving the "due process" clauses of either the Fifth or Fourteenth Amendments to the United States Constitution nor of the provisions of the Sixth Amendment to the United States Constitution.

In order to demonstrate the correctness of this conclusion, we feel it necessary to state the facts of this case as disclosed by the record. This is necessary because petitioner, in his brief, has chosen to intermingle, in this appeal, a collateral attack upon the proceedings by which he was disbarred. Under the provisions of Rule 40, paragraph 3, of the Rules of this Court, we must state our dissatisfaction with the material contained in that section of petitioner's brief, under the heading, statement of fact:

FACTS OF RECORD

The application in this case was filed by the named attorneys in their *individual capacities* as attorneys and counselors at law and members of the bar of the State of Ohio. A brief in support of the application was filed coincidentally and is appended hereto. All of these named attorneys were members of the Unauthorized Practice of Law Committee of the Ohio State Bar Association, to which committee come complaints of the unauthorized and illegal practice of law in Ohio; it was this fact that determined who should be named applicants on the application filed in the Supreme Court of Ohio.[1]

On October 21, 1958, the Ohio Supreme Court issued to Mr. Crow an "Order to show cause why he should not be held in contempt of Court" as set out in Appendix A of petitioner's brief.

Petitioner Crow filed a motion to strike, and to make definite and certain, given parts of the application. This motion was overruled as not responsive to the Court's order to show cause on January 14, 1959, as shown in Appendix B of petitioner's brief.

On January 21, 1959, Mr. Crow filed an answer to the order to show cause, in which he set up four defenses. These four defenses, in effect, stated two propositions: (1) that Mr. Crow was entitled to practice law in Ohio by virtue of his admission to the Bar of this Supreme Court of the United States and to the Bar of the Federal District Court for the Northern District of Ohio; and, (2) that his disbarment was invalid inasmuch as the trial court was without jurisdiction.

[1] Petitioner Crow has stated that John P. Case, who was one of three trial judges in his disbarment case, was one of the applicants. Just what inference is intended to be drawn from this gratuitous statement is unknown to respondents.

Based on the answer of Mr. Crow, there were no facts in issue. As a result, the Supreme Court of Ohio, on June 26, 1959, held Mr. Crow in contempt and ordered him to surrender his license. Mr. Crow made application for a rehearing of this judgment, which application was granted and again the Supreme Court of Ohio found Mr. Crow in contempt and set out the court's conclusions of law on the defenses raised. It is the correctness of this judgment and the refusal of the Ohio Supreme Court to grant a rehearing thereon that now is before this Honorable Court by petition for a writ of certiorari.[2]

THE QUESTION IN THIS CASE

Did the Supreme Court of Ohio err in finding that the answer of J. Harvey Crow admitted that he was engaged, illegally, in the practice of law in Ohio?

[2] Petitioner Crow has made certain statements, beginning with the last three paragraphs on page 6 of his brief and continuing on all of page 7 and down to the last two paragraphs on page 8, which, it is respectfully urged, are totally improper. They are improper because they attempt circuitously to attack the integrity of the Ohio Supreme Court's decision in *this* case by raising matters which are irrelevant and immaterial here, *as neither Judge Bell nor Chief Justice Weygandt took part in this judgment which is now before this Court.*

It shall be a very broad brush which will tar a judge of any court with bias because of other prior or even concurrent professional or social dealings with one of counsel in a current matter before the court *without* any showing of actual bias. Such a theory shall cause judges to be cloistered to an extent never before existing as a matter of fact and have a tendency to destroy their usefulness as judges. Can it be contended that because of the fact that counsel on this brief represented Chief Justice Weygandt in Case Number 36159, The State ex rel Crow v. Weygandt, Chief Justice, et al, 170 O. S. 81, has thereby prejudiced the Chief Justice of Ohio so far as to preclude his ever appearing before Chief Justice Weygandt in other matters *without showing any actual bias?* Such a contention is without foundation in history, law, experience or logic. To *assume* a bias is a concept foreign to the law of this country.

ARGUMENT

Let us now consider the answer of J. Harvey Crow and the defenses he puts forward.

In his first defense, he states that "he is and was entitled to practice law within the State of Ohio" "by Virtue of his Admission and Membership in good standing" at the Bar of the Supreme Court of the United States and the Federal District Court for the Northern District of Ohio.[3]

No authority for such a proposition has been put forth by J. Harvey Crow. To the contrary are the cases of *Ginsburg v. Kovrak*, 392 Pa. 143; 139 A. (2d) 889, appeal dismissed for want of a substantial federal question 358 U. S. 52; and *Petition of Kearney*, 63 So. (2d) 630 (Florida 1953).

In the Ginsburg case, the Supreme Court of Pennsylvania held that admission to practice before the Federal District Court for the Eastern District of Pennsylvania and before the Supreme Court of the United States did not permit the defendant to practice law in the Commonwealth of Pennsylvania nor to hold himself out as being entitled to practice therein.

In the Kearney case, the Supreme Court of Florida held that one desiring to practice law before the federal courts, departments or commissions in Florida, was nevertheless required to qualify to practice law in the State.

Also in point are *People ex rel Chicago Bar Association v. Navotny*, 386 Ill. 536, 54 N. E. (2d) 536, and *State ex rel. Boynton v. Perkins*, 138 Kan. 899, 28 P. (2d) 765.

That for which petitioner contends cannot be sustained upon examination. We will not attempt a detailed examination here but will simply note one problem. The various

[3] It should be noted here that J. Harvey Crow has now been disbarred by this Honorable Court; Misc. Docket 594, June 1, 1959, and by the Federal District Court for the Northern District of Ohio, 82 Ohio Law Abstract 71, 82 Ohio Law Abstract 78.

states have different requirements for admission to the Bar. Some have no educational requirements at all. Can persons be admitted in their home state and thence their local Federal District Court and then other district courts and thereafter set themselves up to practice law in the states of such other district courts without regard to the requirements for admission in those states? Such a situation would be chaotic.

The second, third, and fourth defenses raised: Petitioner Crow generally constitute a collateral attack on his disbarment. The questions which Mr. Crow now raises were all raised at the time of the disbarment proceedings against him. (See Appendix D, Petitioner's Brief) This Honorable Court denied a petition for a writ of certiorari in that case on June 24, 1958. These jurisdictional grounds, and other alleged errors, are now *res judicata*, and not subject to a collateral attack. *Stoll v. Gottlieb*, 305 U. S. 165; *Trainies v. Sunshine Mining Company*, 308 U. S. 66; *Chicot County Drainage District v. Baxter State Bank*, 308 U. S. 371.

J. Harvey Crow has also complained that he has been deprived of his certificate to practice. The right to retain this certificate was lost when petitioner was disbarred, not in this contempt action. Is petitioner saying that he has a *right* to retain the certificate which is official evidence of a privilege which petitioner no longer possesses; and which certificate was issued to petitioner only at a time when he was so privileged, and as evidence of the privilege? One can only speculate why he wishes to retain the certificate and to what use he might put it. So far as the frame on the certificate; this he was *not* required to turn in to the court, but he did so voluntarily. No doubt the frame will be returned to him upon his request.

CONCLUSION

J. Harvey Crow in his answer to the "Order to show cause * * *" admitted he "used the words Attorney-at-Law on his stationary" (sic); admitted he used "the words attorney-at-law, and other phrases" on his "door, window, telephone book". He took the position that he was "entitled to practice law within the State of Ohio.", based on his membership *at that time* at the Bar of this Honorable Court and at the Bar of the United States District Court for the Northern District of Ohio.

The answer of J. Harvey Crow raised *no issue of fact* and, therefore, no hearing was required. He raised questions of law, only, by his answer, and it is respectfully submited that the Supreme Court of Ohio correctly answered those questions.

The citation of authority by Petitioner Crow is either not in point in this case or in no way militates against the position of respondents on the facts in this case.

It is respectfully submitted that this is not a proper case upon which to grant the petition for a writ of certiorari.

Respectfully submitted,

PHILLIP K. FOLK,
Attorney for Respondents.

APPENDIX

Brief in Support of Application

Preliminary Statement

This proceeding is filed at the direction of the Executive Committee of the Ohio State Bar Association.

The conscience of the public in Ohio and of the bar is shocked that a person who has been twice disbarred should openly and notoriously defy the order of disbarment by continuing to hold himself out as an attorney and by continuing to practice law.

Argument

Many complaints have been received by the Ohio State Bar Association concerning the illegal activities of J. Harvey Crow since his last disbarment. Certainly the Bar Association can and should take steps to halt these practices of a man who not once, but twice, has demonstrated his moral unfitness to be a member of the legal profession. His disrespect and disregard for, and defiance of, the authority of this Court is not an offense against a small segment of the populace of Ohio, but is an offense against all of the people and our constitution.

Both the public and the Bar must ask: Is there no remedy to protect the public from such fraudulent conduct? Is there no remedy to prevent the practice of law by a person disbarred, either under the procedure obtaining at the time J. Harvey Crow was disbarred, or under the present system as set out in Rule XXVII of this Court? Does Rule XXVII take on the status of an empty shell that does no more than "strike" a person's name from the roll of attorneys?

The answer to these questions is that there is a remedy. Rule XXVII is not an empty shell. J. Harvey Crow, by his defiant conduct, is in contempt of this Court and is

amenable to summary punishment for such contempt. The allegations in the Application demonstrate that there is need for summary action within the jurisdiction of this Court in order to protect the public.

In the case of the *People ex rel. State Bar of Illinois v. Peoples Stockyards State Bank*, 344 Ill. 462, 176 N. E. 901, a procedure substantially identical to that here presented was followed. The Supreme Court of Illinois, in a long and well considered opinion, completely analyzed the various questions involved. The Respondent in that case contended that that Court had no jurisdiction to entertain the original proceeding of this nature, and that its participation in the proceedings in various trial courts did not constitute a contempt of the Supreme Court, and that the legal services which Respondent performed outside a court did not constitute a contempt of any court, whether or not such services amounted to the practice of law.

In observing that the Constitution of the State of Illinois reserves the judicial powers to the courts, as does the Ohio Constitution, the Court noted that within such judicial power are all powers which are necessary for the complete performance of judicial functions. The Illinois decision points out that although the Constitution does not expressly confer upon the Supreme Court the jurisdiction with respect to the admission of attorneys to the practice of law, that such power and jurisdiction is necessarily implied and is inherent in the court. Further, the Court held that they not only had the inherent power to determine the educational and moral qualifications of applicants for admission to the Bar, but also could discipline or disbar attorneys for misconduct.

In answer to the contention that the Constitution of the State of Illinois provided only that the Supreme Court should have jurisdiction in cases relating to the revenue,

in mandamus, habeas corpus and appellate jurisdiction in all other cases, the Court stated that the original jurisdiction of the Supreme Court over admissions and discipline had never been questioned.

This holding of the Illinois court is directly in accord with the holding of this Court in the case of the *Mahoning County Bar Association v. Franko*, 168 O. S., 17, where it was held that this Court has inherent jurisdiction over proceedings relating to the disciplining of members of the legal profession, and that Rule XXVII of this Court provides a procedure to activate the inherent *duty*, and to implement the inherent power of the court to supervise the disciplining of members of the legal profession in Ohio.

The Illinois court in the Peoples Stockyards State Bank case analyzed the contentions of Respondent in the following language:

> "Having inherent and plenary power and original jurisdiction to decide who shall be admitted to practice as attorneys in this State, this Court also has all the power and jurisdiction necessary to protect and enforce its rules and decisions in that respect. Having power to determine who shall and who shall not practice law in this State, and to license those who may act as attorneys and forbid others who do not measure up to the standards or come within the provisions of its rules, it necessarily follows that this court has the power to enforce its rules and decisions against offenders, even though they have never been licensed by this court. *Of what avail is the power to license in the absence of power to prevent one not licensed from practicing as an attorney? In the absence of power to control or punish unauthorized persons who presume to practice as attorneys and officers of this court the power to control admissions to the Bar would be unavailing.* And so it has been held that the court, which alone has authority to license attorneys, has as a necessary corollary ample implied power to protect this function by punishing unauthorized persons for usurping the privilege of acting as attorneys." (Emphasis supplied)

The emphasized language in the above quotation from the Illinois decision was quoted with approval by this Court in the case of *Land Title Abstract & Trust Company v. Dworken*, 129 O. S., 23.

The Illinois Court also said:

> "Respondent also asserts that while this court has jurisdiction to entertain a proceeding to punish an unlicensed individual for appearing and practicing in this court it has no such jurisdiction or power over one who has been guilty of unauthorized practice of law by appearing in the trial courts of this state. No doubt each trial court in this state has ample authority to punish as for contempt of that court any person who presumes to appear and act as an attorney in that court without having been licensed by this court. But it does not follow that the jurisdiction of the trial court is exclusive in that respect. While the wrongful act constitutes a contempt of the trial court because of the imposition and fraud upon that court, *yet it is also a contempt of this court, and punishable as such, because the wrongdoer has affronted this court by usurping a privilege solely within the power of this court to grant.*" (Emphasis supplied)

This is a completely unique situation. J. Harvey Crow has an extensive law practice at the present time, and continues to maintain the same. It is not limited to Champaign County, wherein he maintains his law office, but he also has, and will continue, to practice in Franklin, Fayette, Madison, Logan, Allen, Hamilton and Montgomery Counties, among others.

No other state court has jurisdiction over all of these counties. This case is further unique in that it is the only instance known to Applicants of a disbarred attorney refusing to stop practicing, with the possible exception of the well-known Thatcher case of almost fifty years ago.

The case of *In re Charles A. Thatcher*, 80 O. S. 492, is authority for the position that this Court has inherent

jurisdiction of proceedings to discipline members of the Bar. In the case of *Mahoning County Bar Association v. Franko*, supra, it was held that this Court has inherent exclusive jurisdiction over admission to the practice of law in Ohio. This Court has also held in the case of *Judd v. The City Trust & Savings Bank*, 133 O. S. 81, that, in Ohio, the power to regulate, control and define the practice of law rests inherently in the judicial branch of the government.

That persons having no official relation to this Court are subject to the jurisdiction of this Court in matters pertaining to the Court's authority over admission and practice is demonstrated by the case of *State, ex rel Turner, Attorney General v. Albin*, 118 O. S. 527, wherein the Court said:

> "If persons of ill repute and lacking honesty and integrity, can gain admission to the bar, the good repute of the bench and bar will suffer, the courts will lose the confidence of litigants, and their usefulness will be destroyed."

and,

> "Unless the purity of the processes of selecting attorneys can be preserved, the usefulness, if not the very existence, of the court is threatened."

and,

> "The purpose in bringing the defendants before the court is to vindicate the dignity and preserve the authority of the court."

Certainly these statements are no less valid when applied to a fact situation as set forth in the Application.

It is clear that if one has usurped the privilege solely within the power of this Court to grant, then it becomes the duty of this Court to vindicate its authority in this field by taking appropriate action. We think that the unique

circumstances of this case come within the purview of the following statement of the Thatcher case:

> " considering the unsettled state of the law in this state and the peculiar circumstances of this case we are entirely warranted in exercising jurisdiction without being in any way under obligation to do so in every case which may be brought to our notice."

Applicants are well aware that in the ordinary illegal practice case, a proceeding is instituted in a lower court. This, however, is not an ordinary type of case. Here, we have a man who has practiced law for many years and is intellectually aware of the nature and quality of the acts which he performs.

J. Harvey Crow here openly flouts the authority of this Court over the practice of law and deceives the public at large by purporting to have the authority to represent them. The only effective way in which Mr. Crow may be dealt with is summarily by action in this Court.

This Application, which is in nature a document informing the court of the activities of J. Harvey Crow, is not unique. In addition to the Illinois case discussed above, this type of procedure has been previously followed in the case of *In re Duncan*, 83 S. Car. 186, 65 S. E. 210. The procedure in the Duncan case is identical to that followed here, with the exception that the information was furnished to the court by the Attorney General, rather than by the bar association. The Duncan case was a case where the Supreme Court received information concerning a disbarred lawyer continuing to practice.

The Application directs itself to the constitutional power of this Court over admissions to the bar, and its control over the practice of law.

Applicants, and through them, the Ohio State Bar Association, are prepared to meet their responsibility to this Court by undertaking all responsibilities which may be imposed by this Court in implementing the Application.

Conclusion

In view of the unique features of this case, as set out hereinbefore, and in view of the fact that this action directly complements the authority of this Court to discipline attorneys under Rule XXVII, we believe that this Court should entertain the Application.